

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION
CAUSE NO. 1:23-CV-00099-SEB-MG

JOHN THOMSON,)
)
Plaintiff,)
)
-vs-)
)
ROCHE DIAGNOSTICS CORPORATION,)
)
Defendant.)

The videoconference deposition upon oral examination of JASON FOWLER, a witness produced and sworn before me, Dana S. Miller, RPR, CRR, a Notary Public in and for the County of Boone, State of Indiana, taken on behalf of the Plaintiff, appearing remotely from Fishers, Hamilton County, Indiana, on the 28th day of August, 2023, at 9:32 a.m., pursuant to the Federal Rules of Civil Procedure.

CIRCLE CITY REPORTING
135 North Pennsylvania
Suite 1720
Indianapolis, IN 46204
(317) 635-7857

1 of which was a corporate account manager covering
2 Contract Research organizations.

3 Q And how many members were there of the GPO Sales
4 team at the time you managed that team?

5 A There were four.

6 Q Okay. And John Thomson was one of those four?

7 A Yes.

8 Q And so, were you John Thomson's direct supervisor
9 from 2015 all the way through 2022?

10 A Yes.

11 Q And, in general, how would you describe your
12 professional relationship with John Thomson?

13 A I thought it was pretty good. I think initially it
14 was a rocky start, but we eventually developed a
15 good working relationship.

16 Q Why do you think it was a rocky start?

17 A Prior to me joining the team, John reported
18 directly to the head of Corporate Accounts. And as
19 part of the reorganization that I joined the team
20 as part of, all of the GPO CADs were moved under
21 me, and I reported to the head of Corporate
22 Accounts.

23 So initially John was unhappy that he no
24 longer -- that he reported to me instead of the
25 head of Corporate Accounts.

1 Q And let me know if you're having any trouble seeing
2 that, and I'm happy to scroll through the document,
3 too.

4 And my question to you is going to be whether
5 you recognize this as the Incentive Compensation
6 Plan that would have applied to your group for
7 fiscal year 2018?

8 A Yeah, it looks like it. Looks like the format that
9 typically we use.

10 Q Okay. And then I'm, for your reference, going to
11 page 3 of Exhibit 1 where it says "Section 3.
12 Incentive Determination & Payout Tables" at the
13 top. And there's a section called "KSO (Key Sales
14 Objectives)."

15 Can you just give me a quick explanation of
16 what a KSO is?

17 A Typically KSO is a non-quantitative measure of
18 performance for the sales team. So it's
19 specifically used for the sales team, and it's
20 separate from the sales or profit or placement
21 targets that are quantifiable metrics.

22 Q And so, are the KSOs unique to each individual on
23 the team or are they more general?

24 A Typically they are general to the specific role.
25 So on my team, KSO team, GPO CAD, the KSOs would be

1 A So they would have a -- I'm trying to think. Do
2 you mean -- maybe just a clarifying question.

3 Do you mean what form do they take or what are
4 the actual KSOs themselves?

5 Q Yeah, I'm more looking for what form do they take.
6 You know, so is there a document that you received
7 where they're all written out or something like
8 that?

9 A Sometimes they would be written out. Sometimes
10 they would be a slide or some other kind of
11 document. And sometimes they're just something
12 that's discussed within Corporate Accounts.

13 Q Okay. And then so, when you take the KSOs and
14 adapt them to the GPO roles, how do you format-wise
15 go about doing that? Is that something in writing?

16 A Sometimes it is, and sometimes similar to the
17 larger team it would be -- normally for us it would
18 be something we have weekly, or we had, I should
19 say, when I was in that role, we would have weekly
20 GPO meetings for the whole team and then weekly
21 one-on-ones with each member and myself to talk
22 through what the priorities were and what our
23 objectives for the year were.

24 Q So when you say weekly meetings, are you meaning
25 that you met weekly throughout the entire year?

1 A Uh-huh, yes.

2 Q Okay. So the first bullet point under that says,
3 "Specific and measurable actions to be completed,
4 specific steps, targets or metrics to be measured
5 against or specific end products."

6 Would you say that's an accurate way to
7 describe the KSOs as they applied to your team?

8 A That is -- that does describe what we came up with.

9 Q Okay. And so, can you give me some examples of
10 what were the specific immeasurable actions or the
11 specific steps, the targets and metrics that made
12 up those KSOs?

13 A Yeah, they're typically very broad categories,
14 like, for instance, one might be engage a specific
15 set of key decision makers within the GPO
16 leadership or within key members of the GPO, which
17 would be -- by member mean a hospital network
18 within there, or during COVID, for instance, it was
19 to manage the expectations and the dynamics of
20 COVID demand and supply, which was very
21 challenging.

22 So broad sort of things like that work within
23 our -- or work with the other CADs within the IHN
24 team for specific opportunities.

25 Q Okay. And so, am I understanding correctly, then,

1 that these KSOs would be more of -- less of, like,
2 a sales number goal and more of, you know, these
3 are the things that you're going to accomplish this
4 year?

5 A Yeah, it's not a -- it's typically not a specific
6 number. There's a revenue component to the ICP
7 plan that deals with that. So these are typically
8 more general.

9 Q And so, how in your practice did you track whether
10 throughout the year the employees that you
11 supervised were meeting these KSOs or not?

12 A That's something that we would talk about in our
13 weekly one-on-ones. So we would talk about, like I
14 said, what activities they're working on, what
15 their priorities were, what challenges they were
16 running into, and anything that they needed help
17 with.

18 Q And when you had these weekly one-on-ones, was it
19 your practice to take notes or write anything down?

20 A Yeah, I typically did take notes of what they -- or
21 their activities were and what they needed help
22 with.

23 Q And how did you do that logistically, pen and paper
24 or type it out?

25 A Sometimes it would be pen and paper, and sometimes

1 that percentage score somehow to HR or payroll so
2 the employees could get paid out based on that
3 percentage?

4 A Yeah, so normally, especially at the year-end
5 process, there was more of a checkpoint at midyear,
6 because the midyear payment was also typically
7 limited to less than the total potential in case
8 someone had a poor second-half performance. But at
9 the year-end, yes, I would submit what my -- or
10 would review as an entire Corporate Accounts team,
11 we would review everyone's revenue profit, so the
12 measurable parts of their ICP plan.

13 And then we would measure or compare their KSO
14 ratings as a team and sort of calibrate to make
15 sure we were all using the same material and
16 measuring people using the same sort of reference
17 points at the end of the year.

18 Q Okay. So when you say calibrate and make sure
19 you're all using the same criteria, how broadly are
20 you talking?

21 A It's very broad. So it would -- people would look
22 through what the different -- so this would be --
23 the head of Corporate Counsel would be their
24 leadership team reviewing what they were submitting
25 for all of their team members. And everyone would

1 review and have a chance to align on places where
2 they felt people were being rated too low or too
3 high. And there would be sort of a discussion to
4 make sure that we were all on the same page as far
5 as how our teams were being rated.

6 Q Okay. And then so, other than this sort of
7 alignment comparison where, you know, if somebody's
8 rating everyone on their team too low or too high
9 or something like that, was there any other process
10 where you would, you know, present for approval the
11 rating for each individual team member that you
12 had?

13 A That was the process. So we would all submit it,
14 and then once the head of Corporate Accounts was
15 comfortable with what all the ratings were for
16 everyone on the team -- the broader team, then that
17 would be submitted to the Incentive Compensation
18 team.

19 Q Okay. And so, did the head of Corporate Accounts
20 ever come to you at any time and say, hey, I think
21 you're rating people on your team too high or too
22 low?

23 A Yes, there were instances like that for sure.

24 Q Okay. Do you know when that happened?

25 A I couldn't name specific events, except that the

1 one I remember most specifically was there was a
2 year where I rated Rick Feid relatively low based
3 on a deal in his space that had been challenging
4 and had not had a good outcome that we ended up
5 losing the business.

6 And Ron asked me to -- well, actually, he
7 raised my rating on Rick, because it was not an
8 account that Rick owned. It was one that he was
9 helping with.

10 Q Okay. Any other specific instances you remember
11 where the head of Corporate Accounts either raised
12 or lowered a score that you gave somebody?

13 A No, I don't remember any others that were -- where
14 they would have impacted an individual's score.

15 Q Okay. And so, in H1 of 2018 when you're giving
16 everybody 100 percent, are you basically saying
17 everybody is doing what they're supposed to be
18 doing?

19 A Yeah, that's -- in our calibration, generally what
20 100 percent would indicate is the people on the
21 team are doing what they're supposed to be doing.

22 Q Okay. And then we have the H2 KSO score for 2018
23 in the next column. And it looks like two people
24 got 105, one person got 103, John Thomson got a
25 96 percent.

1 second half of 2018 on the KSOs, is that -- I mean,
2 how would you rate that score against the broader
3 group? Is it a pretty good score? Is it a pretty
4 low score?

5 A It's a solid score. You can see there's not a huge
6 deviation, and typically there was not, if I
7 remember correctly, there was -- except in very
8 unique circumstances, there was not a huge
9 deviation among the team -- or broad, I should say,
10 dispersion among the team. But I think John was --
11 this is a pretty typical finishing point for him.

12 Q Okay. And then if we kind of scroll back to the
13 first page of this Exhibit 2, the 2018 review, it
14 looks like John received an overall rating of
15 valuable contribution; is that right?

16 A Yep.

17 Q And is that, you know, the best rating that you can
18 get, or is there one above that?

19 A There's one above that. The category names have
20 changed year to year, but this would be the middle
21 category where most people are.

22 Q Okay. And then how many categories are there below
23 valuable contribution?

24 A There's one category below.

25 Q Okay. So are there only three categories total?

1 A Yes, it would have been. Same thing, submit the
2 numbers for the first half and then separate for
3 the second half.

4 Q Gotcha. And then so, this indicates that, you
5 know, at the point of the end of half 1 of 2019,
6 each of these four employees are doing what they're
7 supposed to be doing?

8 A Yeah.

9 Q Okay. And then if we flip to the bottom "H2 KSO
10 Scores," we've got some different scores for each
11 of the employees.

12 Do you have any specific memory of where each
13 of these scores came from?

14 A The one I remember most is John's performance,
15 which he had -- like I mentioned previously, he had
16 three missteps -- significant missteps that year
17 that really hurt him. And we talked about them and
18 worked through them that year. And they were
19 subject of quite a bit of discussion.

20 So John had a review of his EAP, which is the
21 Enterprise Account Plan, so basically his Strategic
22 Plan for his accounts and also review of revenue
23 and things like that where he reviewed with the
24 head of Corporate Accounts that did not go well.
25 And then he had an approval process internally for

1 a changed to a Vizient agreement that also went
2 very, very poorly and kind of blew up into a much,
3 much bigger issue than it should have been.

4 And then, I believe, also that same year there
5 was a problem with an activity that we had -- John
6 communicated to the customer before it was agreed
7 internally that we could do it; and it turned out
8 that we could not. And there was quite a bit of
9 work to figure out an alternative solution that
10 would keep them happy and honor our commitment that
11 John had made.

12 Q And so, did you give a specific explanation to John
13 about why he was scored at 81 percent for his H2
14 KSO score in 2019?

15 A No, I would have -- that would have been part of
16 the performance review process. So all of those
17 issues were discussed at the time that they came
18 up, and they were -- John and I discussed them at
19 length. But, like I said for prior years, KSOs
20 specifically would not have been -- and the
21 calculation would not have been a conversation that
22 he and I had. It would have been part and
23 integrated into that performance review process.
24 And we did discuss it at length in the performance
25 review.

1 "Payout by Person FY," it looks to me -- and
2 correct me if you have a different understanding --
3 it looks to me like she received the \$30,000
4 Balanced Plan Accelerator.

5 Is that consistent with your understanding?

6 A Yes.

7 Q I'm sorry, I missed your answer there.

8 A Sorry, yes. There was some background noise here,
9 but it does look like she received it.

10 Q Okay. And flipping back to the KSO tab here, do
11 you remember anything specifically about why the
12 rest of the employees were rated at 100 percent for
13 both halves?

14 A Yeah, this is 2020, I'm just looking up at the
15 title. So this is first year of pandemic. And,
16 for the most part, the GPO space went not quiet,
17 but went into emergency mode with their members.
18 And almost all agreements were just automatically
19 extended. They didn't, for the most part, do any
20 GPO agreements that year. And the team's focus
21 shifted to handling the COVID questions, the
22 demands and the emergencies within their GPO
23 memberships.

24 So generally there were no GPO contracts or
25 extensions signed that year or not many or not any

1 that were hugely significant. And that would be
2 consistent with Catherine that year, I believe, was
3 more active than the rest in activity within her
4 actual IHN members to get deals done there.

5 So it was a very quiet year for GPO. And so,
6 we adjusted everybody almost to 100 percent, since
7 they did what they needed to do, but it was -- that
8 had changed dramatically in April-May time frame
9 from what we thought we would be working on for the
10 year in Q1.

11 Q Okay. I will show you quickly what I'll mark as
12 Exhibit 13. And my question is whether you
13 recognize this as John Thomson's performance review
14 for 2020?

15 A Yeah, it looks like a printout from the system.

16 Q Okay. And then it looks like, if we scroll to the
17 top of page 2, this year you rated John as valuable
18 contribution overall?

19 A Uh-huh.

20 Q Okay. And there's not a lot of details submitted
21 here.

22 Is there anything -- any detail you can
23 remember to add to what we see here?

24 A Is there any content from either of us this year
25 for John or is this the only document?

1 Q There's nothing listed under supporting documents,
2 and this is what we have.

3 A Okay.

4 Q So I'm not sure if there's anything additional or
5 not.

6 A Yeah, this is consistent with my recollection of
7 that year, is that the -- because of the strain on
8 the organization, and that people ended up doing
9 dramatically different things that year than they
10 anticipated doing through the year, that there was
11 a company-wide decision not to require or even
12 encourage self-assessments or employee assessments
13 that year, because it was such an outlier and
14 turned out so differently than expected.

15 Q Okay. And I'll show you what I'll mark as Exhibit
16 14. And my question is going to be whether you
17 recognize this as the ICP policy that would have
18 applied in 2020?

19 A It looks like the policy, or at least it looks like
20 the format that we use.

21 Q Okay. But, again, you're not familiar with the
22 details of the ins and outs of that policy?

23 A Not off the top of my head, no.

24 Q Okay. And do you recall in 2020 whether anyone
25 submitted any disputes to you about their KSO

1 ratings?

2 A No, I don't recall any disputes that were submitted
3 that year. I think generally everyone was pretty
4 happy, because even outside of Catherine's
5 performance, there was a one-time payment based on
6 COVID performance that year that the entire team
7 got that was pretty significant that was not part
8 of their normal ICP plan.

9 So everyone was pretty happy at the time, and
10 I don't remember any complaints or any protests.

11 Q Okay. And do you remember specifically John being
12 pretty happy with his 100 percent KSO rating?

13 A I don't remember him specifically being happy or
14 dissatisfied with it, but I don't recall -- no, I
15 don't recall either way.

16 Q Okay. And moving along to 2021. I'm showing you
17 what I'll mark as Exhibit 15. And do you recognize
18 this as the 2021 ICP that would have applied to
19 John?

20 A Looks like it, yes.

21 Q Okay. And, again, if we scroll down to page 5, we
22 see the key sales objectives with an annual
23 component target of \$30,000; is that right?

24 A Looks like it, yeah.

25 Q Okay. And then it looks like this year the KSO

1 Q Okay. So do you remember anything specifically
2 about these high-rated outliers in each one of
3 2021?

4 A Yes, these are pretty memorable. So Rick that
5 year, for part of the year, covered the open
6 position. So you see Whitney Johnson up above left
7 her position as GPO CAD covering Vizient. And so,
8 for part of the year Rick covered her territory in
9 addition to his own. He had covered that customer
10 in the past, so he was familiar with them.

11 And then in another part of the year, he
12 covered a different CAD position, an IHN CAD for
13 Ascension who left the Corporate Accounts team.
14 And they happened to be an account that had what we
15 call a regional GPO that was covered by -- that was
16 Rick's responsibility for the regional GPO.

17 So Rick covered the regional GPO and the
18 associated IHN. So he covered two open positions
19 that year, that's why he got the higher rating.

20 And then that year for Catherine was the year
21 that she won and got signature on HealthTrust Core
22 Lab, which was a -- she had been working on for
23 about five years and was one of the top three
24 priorities for the company as a whole that year and
25 was a huge competitive win.

John Thomson <john.thomson@roche.com>

Re: Annual Payout

1 message

Fowler, Jason <jason.fowler@roche.com>
To: "Thomson, John" <john.thomson@roche.com>

Wed, Apr 17, 2019 at 1:33 PM

John - I met with comp team today and reviewed the details of your H2 payout. I confirmed that the profit payout was 100% and that they underpaid you for KSOs. The correction has been requested and you should see it after all process approvals are complete, but don't hold your breath for the next pay period. Keep in mind that ICP and our KSOs are split into 2 halves, so the 100.8% applies to second half only and not the full year (H1 was paid at 100%). I expect the overall adjustment to be just over \$1k before taxes. Thanks for being vigilant - your question helped identify another payout error as well.

Regards,
Jason

On Thu, Apr 11, 2019 at 12:08 PM Jason Fowler <jason.fowler@roche.com> wrote:

John - I have made some progress on this, but I will not have an answer for you today. I have identified what I think is the problem, and I am waiting to hear back from the comp team. Jason

On Wed, Apr 10, 2019 at 11:03 AM Thomson, John <john.thomson@roche.com> wrote:

Jason, please provide an update on where you are with resolving my incorrect annual ICP payout for 2018. As we discussed on February 14, the total payout for achieving plan is \$52,000; KSOs account for 80% and profit for 20%. I was paid a total of \$51,126 for year 2018. You told me that I was paid at 100.8% for KSOs, which equals \$41,932.80. Subtracting that from the \$52,000 equals a payout of \$9,193.20 for profitability, which is approximately 98% of profit plan. Based on the payout of others in Corporate Accounts, I know this is not correct.

If it is easier for you, please let me know who to contact and I will reach out to them to resolve the error.
Thanks,

John Thomson

National Director, Corporate Accounts
Roche Diagnostics Corporation
9115 Hague Rd
Indianapolis, IN 46250
Cell: 770.490.9020

This message is intended only for the use of the named recipient(s) and may contain confidential and/or proprietary information. If you are not the intended recipient, please contact the sender and delete this message. Any unauthorized use of the information contained in this message is prohibited.

--

Jason Fowler

Director, GPO & Business Operations

Corporate Accounts

Roche Diagnostics

EXHIBIT 4

Witness: Jason Fowler

Date: 8/28/23

Dana Miller, RPR, CRR